

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN STEFANCHIK, individually and as an  
officer and director of Beringer Corporation,

SCOTT B. CHRISTENSEN, individually and  
as an officer and director of Atlas Marketing,  
Inc.,

JUSTIN W. ELY, individually and as an  
officer and director of Premier Consulting  
Group, Inc., and as a manager of Atlas  
Marketing, Inc.,

BERINGER CORPORATION, dba The  
Stefanchik Organization, a Washington  
corporation, and,

ATLAS MARKETING, INC., also dba The  
Stefanchik Organization, a Nevada  
corporation, and

PREMIER CONSULTING GROUP, INC., a  
Utah Corporation,

Defendants.

NO. CV04-1852 RSM

**STIPULATED MOTION  
REQUESTING THE COURT  
APPOINT A MAGISTRATE FOR  
EARLY MEDIATION AND ORDER**

**NOTE ON MOTION CALENDAR:  
April 11, 2006**

**STIPULATED MOTION AND ORDER RE: APPOINTMENT OF  
MAGISTRATE FOR EARLY MEDIATION - 1**

**RELIEF REQUESTED**

COME NOW all parties to this case, through their respective counsel of record, and hereby request that the Court appoint a Federal Magistrate to conduct an early mediation as soon as possible. The parties believe that a mediation with a Federal Magistrate at this point in the litigation is likely to foster an early and inexpensive resolution of the case.

**STATEMENT OF FACTS**

**A. Summary of the Claims**

Defendants, Beringer Corporation, Atlas Marketing, Inc., John Stefanchik, Scott Christensen and Justin Ely, marketed and sold educational materials and related services and seminars (“Program”) via telemarketing and an Internet web site. The Program purported to teach consumers how to make money by buying and selling privately-held mortgage notes, commonly referred to as “paper.” Through advertisements, promotional materials, and telemarketing pitches made to consumers, defendants represented that consumers could earn money if they followed the defendants’ methods for buying and selling paper. Defendants also sold personal coaching services to consumers who purchased the Program.

In its Complaint, plaintiff FTC alleges that defendants made false and unsubstantiated claims that consumers were likely to make substantial amounts of money using the defendants’ paper business methods or services in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC also alleges that these representations violate Part 310 of the Telemarketing Sales Rule, 16 C.F.R. Part 310. Plaintiff FTC further alleges that defendants made false representations in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, to consumers that defendants’ coaches had experience and expertise in the paper business and were readily available to consumers to help assure their success. Defendants deny the FTC’s allegations. Defendants assert that they provided students with the potential to make substantial amounts of

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money through completion of the Program. Defendants also assert that their coaching staff, in addition to being available, possessed the experience and expertise necessary to aid students in succeeding in the Program. Finally, Defendants assert that they did not make false representations to consumers in connection with a telemarketing sale, and thus are not liable under the Telemarketing Sales Rule. Defendants Stefanchik and Beringer filed a cross-claim against Defendants Atlas and Christensen alleging negligence. Defendants Atlas and Christensen deny these allegations in their entirety.

### **B. Procedural Status**

This case is scheduled for trial on January 8, 2007, and mediation is to be conducted by November 24, 2006. The parties have conducted periodic settlement negotiations over the past year. While at times the parties have felt that a resolution was near, they have been unable to conclude settlement. All parties believe that mediation at this time with a Federal Magistrate would be beneficial before everyone incurs extensive fees and costs in conducting additional discovery.

## **LEGAL ANALYSIS**

CR 16(b) provides as follows:

### **(b) Later Recommendations of Parties for ADR Proceedings.**

As the case proceeds, if counsel for any party concludes that an ADR procedure would have a significant possibility of fostering an early and inexpensive resolution of the case, that counsel shall so advise the court and all other counsel in writing. Whenever possible, such reports should be submitted jointly by counsel for all parties.

Here, all parties to this case believe that there is a significant possibility of fostering an early and inexpensive resolution of this case if they can proceed with mediation before a Federal Magistrate in the very near future. The parties acknowledge that CR 39.1

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contemplates that parties will first conduct a private mediation before requesting a Federal Magistrate to conduct such proceedings. However, in this particular case, it is the view of all counsel, that a conventional mediator, such as a retired judge or private attorney, would not command the same type of respect and legal authority as would a Federal Magistrate. This is particularly needed in view of the fact that extensive negotiations have occurred but an actual settlement has repeatedly fallen through. Moreover, it is difficult and costly to find a private mediator with expertise in this specialized area of federal law involving the FTC Act and the Telemarketing Sales Rule. For these reasons, the parties request this Court make a special accommodation and order the parties to participate in mediation with a Federal Magistrate as early as mid-May.

### CONCLUSION

The parties to this case believe that there is a significant possibility of fostering an early and inexpensive resolution of this case if they can proceed with mediation before a Federal Magistrate in the very near future. Accordingly, this stipulated motion is presented to the Court on behalf of all parties.

DATED this 11th day of April, 2006.

COZEN O'CONNOR

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### **ORDER**

Based upon the foregoing stipulation of the parties, the Court hereby GRANTS the motion for appointment of a Federal Magistrate to conduct an early mediation as soon as possible.

Done this 19 day of April 2006.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Presented By:

COZEN O'CONNOR

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